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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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SYMANTEC CORPORATION

8 UNITED STATES DISTRICT COURT FOR THE
9 SOUTHERN DISTRICT OF CALIFORNIA

10 **VIA FAX**

11 SYMANTEC CORPORATION,

12 Plaintiff,

13 vs.

14
15 EDIRECTSOFTWARE, a Canadian
partnership; JESSE WILLMS, an
16 individual; LINDA WILLMS, an
individual; MICHAEL CALLAWAY,
17 an individual; 1016363 ALBERTA
LTD., a Canadian Corporation; 1021018
18 ALBERTA LTD., a Canadian
Corporation; and DOES 1-10, inclusive,

19
20 Defendants.
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Case No 07 CV 0563

BEN WMc

COMPLAINT FOR:

- (1) TRADEMARK INFRINGEMENT
- (2) LANHAM ACT § 43(a)
- (3) COPYRIGHT INFRINGEMENT
- (4) FRAUD
- (5) TRAFFICKING IN COUNTERFEIT LABELS, DOCUMENTATION AND/OR PACKAGING (18 U.S.C. § 2318)
- (6) UNFAIR COMPETITION (Cal. B&P § 17200, et seq.)
- (7) COMMON LAW UNFAIR COMPETITION
- (8) STATE LAW FALSE ADVERTISING
- (9) INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE
- (10) NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

JURY TRIAL DEMANDED

SUBJECT MATTER JURISDICTION AND VENUE

1
2 1. This Court has subject matter jurisdiction over the claims in this
3 action which relate to copyright, trademark and federal unfair competition laws
4 pursuant to the provisions of 15 U.S.C. §1121, 28 U.S.C. §1338 and 28 U.S.C.
5 §1331.

6 2. This Court has supplemental jurisdiction over the claims in this
7 complaint which arise under the statutory and common law of the State of
8 California pursuant to 28 U.S.C. §1367(a), since the state law claims are so related
9 to the federal claims that they form part of the same case or controversy and derive
10 from a common nucleus of operative facts.

11 3. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b). The
12 Plaintiff alleges on information and belief that software that is the subject of this
13 complaint was mailed to customers in the Southern District of California. The
14 infringing products which are the subject of this litigation were distributed and/or
15 offered for distribution in the Southern District of California, and the claims
16 alleged in this action arose in the Southern District of California.

PARTIES

17
18 4. Plaintiff Symantec Corporation ("Plaintiff" or "Symantec") is, and at
19 all times herein mentioned was, a corporation organized and existing under the
20 laws of the State of Delaware, and qualified to do business in California.
21 Symantec's corporate offices are in California, including corporate headquarters in
22 the San Francisco bay area and offices in the counties of Los Angeles and San
23 Diego, California.

24 5. Plaintiff is informed and believes and on that basis alleges that
25 defendant Jesse Willms is an individual with his principal residence in Alberta,
26 Canada, and principal business addresses in Montana, USA and in Alberta,
27 Canada. Plaintiff is informed and believes and on that basis alleges that defendant
28 Jesse Willms sometimes does business under the fictitious names set forth in this

1 complaint. Plaintiff may seek to amend this complaint to add additional such
2 fictitious names when they are ascertained.

3 6. Plaintiff is informed and believes and on that basis alleges that
4 defendant Linda Willms is an individual with her principal residence in Alberta,
5 Canada, and principal business addresses in Montana, USA and in Alberta,
6 Canada. Plaintiff is informed and believes and on that basis alleges that defendant
7 Linda Willms sometimes does business under the fictitious names set forth in this
8 complaint. Plaintiff may seek to amend this complaint to add additional such
9 fictitious names when they are ascertained.

10 7. Plaintiff is informed and believes and on that basis alleges that
11 defendant Michael Callaway ("Callaway") is an individual with his principal
12 residence in Alberta, Canada, and principal business addresses in Montana, USA
13 and in Alberta, Canada. Plaintiff is informed and believes and on that basis
14 alleges that defendant Jesse Willms sometimes does business under the fictitious
15 names set forth in this complaint. Plaintiff may seek to amend this complaint to
16 add additional such fictitious names when they are ascertained.

17 8. Defendants Jesse Willms, Linda Willms and Callaway are sometimes
18 referred to in this complaint as the "Individual Defendants."

19 9. Plaintiff is informed and believes and on that basis alleges that
20 defendant eDirectSoftware ("eDirect") is a partnership organized under the laws of
21 the province of Alberta, Canada.

22 10. Plaintiff is informed and believes and on that basis alleges that
23 defendant 1016363 Alberta Ltd. ("1016363") is a Canadian corporation with
24 principal business address in Alberta, Canada.

25 11. Plaintiff is informed and believes and on that basis alleges that
26 defendant 1021018 Alberta Ltd. ("1021018") is a Canadian corporation with
27 principal business address in Alberta, Canada.

28 12. Defendants eDirect, 1016363 and 1021018 are sometimes referred to

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1 in this complaint as the "Business Entity Defendants."

2 13. Plaintiff is informed and believes and on that basis alleges that each
3 of the defendants sometimes does business under the name edirectsoftware.com,
4 and that each of the defendants participates in the operation, management and
5 control of the internet website at www.edirectsoftware.com.

6 14. Plaintiff is informed and believes and on that basis alleges that each
7 of the Individual Defendants is an owner of each of the Business Entity
8 Defendants.

9 15. Plaintiff is informed and believes and on that basis alleges that each
10 of the Individual Defendants is an officer of each of the Business Entity
11 Defendants.

12 16. Plaintiff is informed and believes and on that basis alleges that each
13 of the Individual Defendants is a director or manager of each of the Business
14 Entity Defendants.

15 17. Plaintiff is informed and believes and on that basis alleges that each
16 of the Individual Defendants manages the affairs of each of the Business Entity
17 Defendants and as such is aware of the activities of each of the Business Entity
18 Defendants as alleged in this Complaint.

19 18. Plaintiff is informed and believes and on that basis alleges that each
20 of the Individual Defendants sometimes does business under the names
21 edirectsoftware.com and edirectsoftware, and that each of the defendants has
22 created, operates and uses a website at the internet location
23 www.edirectsoftware.com for the wrongful activities alleged in this complaint.

24 19. Plaintiff is informed and believes and on that basis alleges that each
25 of the Individual Defendants in his or her capacity as owner, officer, director,
26 manager and/or executive of each of the Business Entity Defendants, is personally
27 aware of, and has authorized, approved, ratified, participated in, and instigated the
28 wrongful conduct set forth in this complaint.

1 20. Plaintiff is informed and believes and on that basis alleges that each
2 of the Individual Defendants is personally aware of, and has authorized, approved,
3 ratified, participated in, and instigated the wrongful conduct set forth in this
4 complaint.

5 21. Plaintiff is unaware of the true names and capacities of the defendants
6 sued herein under the fictitious names DOE 1 - DOE 10, inclusive. Plaintiff will
7 seek leave to amend to state the true names and capacities of such defendants
8 when such information is ascertained.

9 22. At all times material herein, each of the defendants was the agent,
10 employee, and/or representative of each of the remaining defendants, and, in doing
11 the things alleged herein, was acting within the scope of such agency,
12 employment, or representation.

13 23. Plaintiff is informed and believes and on that basis alleges that there
14 exists, and at all times relevant hereto there existed, a unity of interest and
15 ownership between each of the Business Entity Defendants and each of the
16 Individual Defendants such that any individuality and separateness of each of the
17 Business Entity Defendants ceased or never existed, and each of the Individual
18 Defendants is the alter ego of each of the Business Entity Defendants.

19 24. Plaintiff is informed and believes and on that basis alleges that each
20 of the Individual Defendants created and continues to use each of the Business
21 Entity Defendants to shield him or her from liability for the actions complained of
22 in this complaint.

23 25. Plaintiff is informed and believes and on that basis alleges that each
24 of the Individual Defendants has and continues to: commingle and fail to
25 segregate each of the Business Entity Defendants' funds and other assets from his
26 or her own; treat assets nominally belonging to each of the Business Entity
27 Defendants as his or her own; and share a unity of ownership, control and
28 management with each of the Business Entity Defendants.

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1 26. Plaintiff is informed and believes and on that basis alleges that each
2 of the Business Entity Defendants has inadequate capitalization and functions as a
3 mere shell and/or conduit for the business ventures of each of the Individual
4 Defendants such that any activities attributed to the former are in fact activities of
5 the latter, and that each of the Individual Defendants uses each of the Business
6 Entity Defendants as a subterfuge designed to avoid liability for the wrongful
7 conduct attributable to himself or herself as alleged throughout this complaint.

8 27. Adherence to the fiction of the existence of each of the Business
9 Entity Defendants as an entity separate and distinct from each of the Individual
10 Defendants would permit an abuse of the corporation and/or limited liability
11 company privilege and would promote injustice and fraud in that it would enable
12 each of the Individual Defendants to continue to commit the actions complained of
13 in this complaint while shielding himself or herself from liability by use of each of
14 the insolvent Business Entity Defendants.

15 **CENTRAL ALLEGATIONS OF WRONGDOING**

16 28. Plaintiff manufactures and distributes software for personal
17 computers.

18 29. Plaintiff has produced several different versions of its Norton
19 SystemWorks ("NSW") products, including NSW 2003 and NSW 2003
20 Professional Edition and annual revisions of both versions. The most recent NSW
21 products include Norton SystemWorks 2005, Norton SystemWorks 2005 Premier
22 Edition, Norton SystemWorks 2006, and Norton SystemWorks 2006 Premier
23 Edition.

24 30. Each NSW product consists of a suite of several popular and useful
25 software programs, including but not limited to: Norton AntiVirus; Norton
26 Utilities; Norton CleanSweep; Roxio's GoBack; and Norton Ghost. NSW also is
27 distributed with the "LiveUpdate" feature as alleged elsewhere in this Complaint.

28 31. Plaintiff also manufactures stand-alone versions of some of the

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1 software products bundled together in its NSW product. One popular product is.
2 Norton AntiVirus. Plaintiff has manufactured several versions of Norton
3 AntiVirus for distribution and sale as separate products with their own disks and
4 distinctive retail packaging, including but not limited to Norton AntiVirus 2004,
5 Norton AntiVirus 2004 Professional Edition and Norton AntiVirus 2005.

6 32. Symantec also manufactures pcAnywhere, with which computer users
7 can remotely perform certain functions on computers. Symantec has manufactured
8 several versions of pcAnywhere, including but not limited to pcAnywhere
9 versions 10.5, 11.0 and 11.5.

10 33. Symantec also manufactures Norton Internet Security, including but
11 not limited to Norton Internet Security Family Edition and Norton Internet
12 Security 2005.

13 34. Symantec also manufactures Symantec AntiVirus Small Business
14 Edition, an anti-virus program.

15 35. Symantec also manufactures LiveUpdate, a computer software
16 program available by subscription which enables users of certain Symantec
17 software products to receive updates via downloads during the period of the
18 subscription. LiveUpdate is included in several Norton and/or Symantec products.

19 36. Symantec also manufactures WinFax Pro 10.0, a program that enables
20 computer users to send and receive faxes.

21 37. Symantec requires that all genuine, authorized copies of its software
22 be accompanied with certain labeling, documentation and/or packaging. Among
23 other things, the distinctive labeling, documentation and/or packaging provides
24 assurances to consumers that they have purchased genuine Norton and/or
25 Symantec software.

26 38. Some of Symantec's software products are distributed with serial
27 numbers, which Symantec refers to as "product keys." The product key is
28 necessary to "activate" a Symantec software product during or shortly after

1 installation. Generally, the software will operate for only a short period if it is
2 installed without activation with the product key.

3 39. A genuine product key may be used by a purchaser of genuine Norton
4 and/or Symantec software to obtain certain technical services, upgrades, and
5 renewals. Without an authorized and properly registered product key, Symantec
6 may refuse to provide such benefits to the holder of purported Norton and/or
7 Symantec software, in part because the lack of a proper product key is strong
8 evidence the software is counterfeit.

9 40. The product keys also provide assurances to consumers that they have
10 purchased genuine Norton and/or Symantec software.

11 41. Plaintiff distributes some of its software products pursuant to
12 agreements, commonly referred to as "OEM" agreements. Generally, such
13 agreements allow customers ("licensees") who sell and/or distribute computers to
14 distribute copies of Plaintiff's software with those computers. Plaintiff's OEM
15 agreements contain restrictions on the use, distribution, sale and resale of
16 Plaintiff's software by the licensee.

17 42. The OEM agreements require, among other things, that the licensee
18 also require its customers in turn to comply with the terms of the OEM agreement,
19 including the restrictions therein as to the use, distribution, sale and resale of
20 Plaintiff's software covered by the OEM agreements.

21 43. Some of Plaintiff's software titles are distributed on discs pursuant to
22 an OEM agreement. The OEM agreements require such discs to be distributed, if
23 at all, with the computers each licensee sells to its own customers.

24 44. Plaintiff's OEM agreements require each disc containing software
25 authorized for sale or distribution pursuant to an OEM agreement to be labeled as
26 "OEM" software which can only be sold or distributed with the computer
27 equipment sold by the licensee. Sale or distribution of OEM discs by themselves,
28 *i.e.*, without the required computer equipment, violates the terms of Plaintiff's

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1 OEM agreement. Such sale or distribution also violates the requirements set forth
2 on the label printed on each OEM disc.

3 45. The defendants advertise merchandise for sale, including software
4 represented to be produced by Plaintiff.

5 46. In or about 2005, Plaintiff became aware that the defendants were
6 marketing and selling products using Plaintiff's trademarks, representing that such
7 products were produced by Plaintiff, when in fact the defendants were marketing
8 and selling products neither manufactured by nor authorized by Symantec,
9 representing them as software manufactured by Symantec.

10 47. During 2005 Plaintiff began receiving information that the defendants
11 were marketing, distributing and selling software, bearing the Norton and
12 Symantec trademarks and logos, but which was neither produced by Plaintiff nor
13 authorized by Plaintiff to be produced or sold. Plaintiff alleges on information and
14 belief that customers who purchased such software believed it to be produced by
15 Plaintiff, and were confused and misled by the defendants' marketing, labeling,
16 and sale of software using Plaintiff's trademarks.

17 48. In or about August 2005, Plaintiff, through its agents, purchased a
18 copy of Symantec's WinFax Pro 10.0 from the defendants' website at
19 edirectsoftware.com.

20 49. The defendants sent a disc marked with the Symantec name and logo
21 and the name "WinFax Pro 10.0," designed to look like a genuine Symantec
22 product.

23 50. The product was shipped as a bare disc in a sleeve, without any retail
24 box, instruction manual or other packaging materials.

25 51. The return address on the shipping envelope was "c/o edirectsoftware,
26 PO Box 320482, San Francisco, CA 94132-0482."

27 52. Symantec inspected the disc and determined that it was counterfeit,
28 and was neither produced by Symantec nor authorized by Symantec to be

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1 produced by any other person or entity.

2 53. In or about August 2005, Plaintiff, through its agents, purchased a
3 copy of Symantec's pcAnywhere 11.5 from the defendants' website at
4 edirectsoftware.com.

5 54. The defendants sent a disc marked with the Symantec name and logo
6 and the name "pcAnywhere 11.5," designed to look like a genuine Symantec
7 product.

8 55. The product was shipped as a bare disc in a sleeve, without any retail
9 box, instruction manual or other packaging materials.

10 56. The return address on the shipping envelope was "c/o edirectsoftware,
11 PO Box 320482, San Francisco, CA 94132-0482."

12 57. Symantec inspected the disc and determined that it was counterfeit,
13 and was neither produced by Symantec nor authorized by Symantec to be
14 produced by any other person or entity.

15 58. Several consumers submitted discs to Symantec that they had
16 purchased from defendants. Plaintiff is informed and believes and on that basis
17 alleges that those customers purchased those discs during the period September
18 2004 through February 2006.

19 59. Those discs also proved to be counterfeit. The counterfeit discs
20 include purported NSW 2005 Premier, Norton Internet Security 2005, Norton
21 AntiVirus 2004, Norton AntiVirus 2005, and Norton Ghost 10.0.

22 60. Plaintiff is informed and believes and on that basis alleges that the
23 discs were delivered in white sleeves without any retail packaging, without any
24 instruction manuals, and without any of the materials that would come with a
25 genuine Symantec product.

26 61. Symantec inspected the discs and packaging materials and determined
27 that they were counterfeit, and were neither produced by Symantec nor authorized
28 by Symantec to be produced by any other person or entity.

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1 62. On or about April 20, 2006, the Plaintiff notified the defendants that
2 Plaintiff believed defendants were selling counterfeit Norton and/or Symantec
3 software products, and demanding that they immediately cease and desist from
4 such wrongful and infringing conduct.

5 63. Defendants responded and initially promised to cooperate with the
6 Plaintiff. Defendants disclosed some information concerning their source of
7 supply of the purported Norton and Symantec products, and promised to submit
8 their inventory of purported Norton and Symantec products to Plaintiff for
9 inspection and evaluation.

10 64. Defendants did submit some purported Norton and Symantec
11 products for inspection and evaluation by the Plaintiff.

12 65. Plaintiff determined that the discs Defendants provided for inspection
13 were either outright counterfeits or discs that were offered for sale in violation of
14 Symantec's OEM agreements, as described previously in this Complaint.

15 66. Defendants failed to provide all of their inventory to the Plaintiff for
16 inspection and analysis. Plaintiff is informed and believes and on that basis
17 alleges that the reason defendants failed to provide all their inventory is that
18 defendants were aware that the discs they withheld were counterfeit and/or
19 unauthorized copies of Plaintiff's software products.

20 67. Despite the Plaintiff's notice, defendants have failed and refused to
21 cease their infringing activities. Instead, defendants have chosen to willfully
22 ignore the Plaintiff's rights, and to wrongfully profit by willfully and intentionally
23 continuing to market and sell counterfeit products using the Plaintiff's name,
24 service marks and intellectual property owned by Plaintiff.

25 68. Plaintiff is informed and believes and on that basis alleges that
26 defendants sell unauthorized copies of Plaintiff's software with counterfeit product
27 key codes. The unauthorized copies of Plaintiff's software do not legitimately
28 entitle purchasers to install or use the software, or to obtain technical support,

1 upgrades or renewals. Plaintiff is informed and believes and on that basis alleges
2 that such consumers are less likely to purchase genuine Norton and/or Symantec
3 products in the future.

4 69. Defendants sell illegal counterfeit copies of Plaintiff's software.
5 Defendants falsely represent to potential buyers that the software defendants sell is
6 manufactured by Plaintiff. The software that defendants deliver to purchasers
7 bears the Symantec name and trademarks, but is neither produced by Plaintiff
8 Symantec nor produced under Plaintiff Symantec's authorization or any Symantec
9 license.

10 70. Plaintiff is informed and believes, and on that basis alleges, that
11 defendants marketed, sold and delivered counterfeit Norton and/or Symantec
12 software with which the purchasers or recipients of such software themselves
13 produced infringing copies of Plaintiff's copyrighted works by installing the
14 counterfeit programs on their computers. As part of that installation process, each
15 of those purchasers produces unauthorized copies of Plaintiff's copyrighted works
16 with each such installation.

17 **FIRST CLAIM FOR RELIEF**

18 **[Trademark Infringement**

19 **Lanham Act, 15 U.S.C. § 1051 - 1157]**

20 **(Against All Defendants)**

21 71. Paragraphs 1 through 70 are incorporated by this reference as though
22 set forth herein in full.

23 72. Plaintiff registered the name "Symantec" in the United States Patent
24 and Trademark Office on April 21, 1992, registration number 1683688. Plaintiff
25 owns the trademark, which continues to be in full force and effect.

26 73. Plaintiff registered the name "Norton System Works" in the United
27 States Patent and Trademark Office on September 11, 2001, registration number
28 2488092. Plaintiff owns the trademark, which continues to be in full force and

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1 effect.

2 74. Plaintiff registered the name "Norton AntiVirus" in the United States
3 Patent and Trademark Office on March 16, 1993, registration number 1758084.
4 Plaintiff owns the trademark, which continues to be in full force and effect.

5 75. The name "Ghost" was registered in the United States Patent and
6 Trademark Office on November 28, 1978, registration number 1107115. Plaintiff
7 owns the trademark, which continues to be in full force and effect.

8 76. Plaintiff registered the name "LiveUpdate" in the United States Patent
9 and Trademark Office on May 4, 1999, registration number 2243057. Plaintiff
10 owns the trademark, which continues to be in full force and effect.

11 77. The name "Norton Utilities" was registered in the United States
12 Patent and Trademark Office on October 18, 1988, registration number 1508960.
13 Plaintiff owns the trademark, which continues to be in full force and effect.

14 78. The name "pcAnywhere" was registered in the United States Patent
15 and Trademark Office on July 13, 1993, registration number 1781148. Plaintiff
16 owns the trademark, which continues to be in full force and effect.

17 79. The name "Cleansweep" was registered in the United States Patent
18 and Trademark Office on November 21, 1995, registration number 1936913.
19 Plaintiff owns the trademark, which continues to be in full force and effect.

20 80. From and after the date of registration of each of its trademarks,
21 Plaintiff has used the trademarks continuously to identify its products. Plaintiff
22 markets, distributes and sells software under those trademarks in California,
23 throughout the United States, and in foreign countries.

24 81. Plaintiff is informed and believes and on that basis alleges that at all
25 times relevant to the matters alleged in this complaint, the defendants knew that
26 the names "Symantec," "SystemWorks," "Norton AntiVirus," "Ghost,"
27 "pcAnywhere," and other trademarks were registered trademarks, owned by
28 Plaintiff. Plaintiff is informed and believes and on that basis alleges that, despite

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1 that knowledge, defendants intentionally continued to infringe Plaintiff's
2 trademarks by advertising, marketing, selling and delivering software bearing
3 Plaintiff Symantec's names and trademarks, designed to look like Plaintiff
4 Symantec's software.

5 82. Defendants, in violation of 15 U.S.C. § 1114, use in commerce
6 reproductions, counterfeits, copies, or colorable imitations of Plaintiff's registered
7 marks in connection with the sale, offering for sale, distribution, or advertising of
8 software designed to look like Plaintiff's software but which is neither genuine
9 Symantec software nor authorized by Symantec for distribution or sale. Such
10 unauthorized counterfeit copies are likely to cause confusion, or to cause mistake,
11 or to deceive, and have caused actual confusion, mistake and/or deception among
12 consumers who purchase defendants' products mistakenly believing they are
13 genuine, authorized versions of Plaintiff's products.

14 83. Plaintiff is informed and believes and on that basis alleges that
15 defendants, in violation of 15 U.S.C. § 1114, reproduce, counterfeit, copy, or
16 colorably imitate Plaintiff's registered marks and apply such reproduction,
17 counterfeit, copy, or colorable imitation to labels, CDs, packages, and/or
18 advertisements intended to be used in commerce upon or in connection with the
19 sale, offering for sale, distribution, or advertising of software designed to look like
20 Plaintiff's software but which is neither genuine Symantec software nor authorized
21 by Symantec for distribution or sale. Such unauthorized counterfeit copies are
22 likely to cause confusion, or to cause mistake or to deceive, and have caused
23 actual confusion, mistake and/or deception among consumers who purchase
24 defendants' products mistakenly believing they are genuine, authorized versions
25 of Plaintiff's products.

26 84. Plaintiff is informed and believes and on that basis alleges that
27 defendants use Plaintiff's trademarks in interstate commerce by: (1) advertising
28 defendants' products bearing the Plaintiff's trademarks on the internet; and

1 (2) shipping counterfeit copies of Plaintiff's software in interstate commerce.
2 Defendants' use of Plaintiff's trademarks on defendants' products has misled and
3 confused consumers as to the source and quality of defendants' products.

4 85. Plaintiff is informed and believes and on that basis alleges that as a
5 proximate result of the defendants' use of Plaintiff's trademarks, defendants have
6 taken unfair advantage of Plaintiff's research, development, advertising,
7 marketing, and consumer recognition of the Symantec name and logo, the Norton
8 name, Norton SystemWorks, pcAnywhere, Norton AntiVirus, LiveUpdate, Ghost,
9 Norton Internet Security and other trademarks. Plaintiff is informed and believes
10 and on that basis alleges that defendants have sold substantial amounts of software
11 using Plaintiff's trademarks, and have thereby enjoyed substantial profits, which
12 Plaintiff believes are in excess of \$8,000,000.

13 86. Plaintiff is informed and believes and on that basis alleges that unless
14 restrained by this Court, defendants will continue to infringe Plaintiff's
15 trademarks, thereby creating numerous claims against defendants and multiple
16 proceedings; and that monetary compensation cannot provide Plaintiff with
17 adequate relief for the damage caused by defendants to Plaintiff's trademarks,
18 consumer recognition, and public confidence in Plaintiff's products.

19 87. Defendants' actions, if not restrained, will continue to cause
20 irreparable harm to Plaintiff, for which Plaintiff has no adequate remedy at law.
21 Defendants misrepresent their own products as those manufactured by Plaintiff.
22 Plaintiff is informed and believes, and on that basis alleges, that consumers who
23 purchase defendants' products, believing they have purchased Plaintiff's software,
24 will not purchase the genuine software from Plaintiff. Plaintiff has permanently
25 lost such consumers as customers, and has permanently lost the profits Plaintiff is
26 entitled to under its trademarks.

27 88. Plaintiff is informed and believes, and on that basis alleges, that if
28 defendants' products do not work properly, defendants' actions have further

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1 caused irreparable harm to Plaintiff's name and reputation, because defendants
2 market and sell their products bearing false reproductions of Plaintiff's
3 trademarks.

4 **SECOND CLAIM FOR RELIEF**

5 **[False Designation of Origin — Lanham Act § 43(a)]**

6 **(Against All Defendants)**

7 89. Paragraphs 1 through 88 are incorporated by this reference as though
8 set forth herein in full.

9 90. Plaintiff has marketed, advertised and promoted its software under the
10 names and logos "Symantec," "Norton System Works," "Norton AntiVirus,"
11 "pcAnywhere," "Ghost," "LiveUpdate," "Norton CleanSweep," "Norton Internet
12 Security," "Symantec AntiVirus Small Business Edition," and other names and
13 logos. As a result of this marketing, advertising and promotion, Plaintiff's names
14 and logos have come to mean and are understood to mean Plaintiff's products, and
15 are the means by which Plaintiff's products are distinguished from other software
16 in the United States and worldwide.

17 91. Because of Plaintiff's long, continuous and exclusive use of the
18 names and logos as described in this complaint, Plaintiff's names and logos have
19 acquired secondary meaning and are associated by both the software industry and
20 the public with Plaintiff's products.

21 92. Defendants' activities in advertising and/or promoting their software
22 bearing Plaintiff's names, logos, trademarks and counterfeit serial numbers or
23 product keys constitute false designation of origin, false description, and a false
24 representation that defendants' software originates from or is sponsored, approved
25 or authorized by Plaintiff. Thus, defendants' activities constitute violations of
26 Section 43(a) of the Lanham Trademark Act, 15 U.S.C. § 1125(a).

27 93. Plaintiff is informed and believes and on that basis alleges that
28 defendants have sold numerous counterfeit copies of Plaintiff's software, and have

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1 thereby enjoyed substantial profits, which Plaintiff believes are in excess of
2 \$8,000,000.

3 94. As a result of the foregoing, Plaintiff has been damaged in an amount
4 which has not been precisely ascertained, but which will be alleged by amendment
5 at such time when it is precisely ascertained.

6 95. The activities of defendants have caused and will cause irreparable
7 harm to Plaintiff for which Plaintiff has no adequate remedy at law in that (1) if
8 defendants' wrongful conduct continues, consumers are likely to become further
9 confused as to the ownership and/or affiliations of defendants' products; (2) the
10 infringement by defendants constitutes an interference with Plaintiff's goodwill
11 and customer relationships; and (3) defendants' wrongful conduct, and the
12 damages resulting to Plaintiff, are continuing. Accordingly, Plaintiff is entitled to
13 preliminary and permanent injunctive relief.

14 96. Defendants have committed the acts alleged above with previous
15 knowledge of Plaintiff's prior use and superior rights to its names and logos, and
16 with previous knowledge of the reputation of Plaintiff's products.

17 97. Further, defendants' actions were for the willful and calculated
18 purpose of attracting customers to their products based upon the good will of
19 Plaintiff's name and business reputation, so as to mislead and deceive purchasers
20 and the public. Defendants' actions have caused and/or are likely to cause
21 confusion and mistake among purchasers and the public as to the ownership or
22 association of their products, all to defendants' gain and Plaintiff's damage.

23 98. Plaintiff is also entitled to recovery of attorneys' fees and costs of suit
24 pursuant to 15 U.S.C. § 1117.

25
26
27
28

THIRD CLAIM FOR RELIEF

[Copyright Infringement

17 U.S.C. § 501]

(Against All Defendants)

99. Paragraphs 1 through 98 are incorporated by this reference as though set forth herein in full.

100. Plaintiff designed, created, developed and owns or licenses software, including each of the software programs included in the various versions of NSW, which constitute the original work of Plaintiff.

101. Plaintiff designed, created, developed and owns or licenses the software contained in pcAnywhere, which constitutes the original work of Plaintiff.

102. Plaintiff designed, created, developed and owns or licenses the software contained in Norton Internet Security, which constitutes the original work of Plaintiff.

103. Plaintiff designed, created, developed and owns or licenses the software contained in Symantec AntiVirus Small Business Edition, which constitutes the original work of Plaintiff.

104. Plaintiff complied with all laws governing copyright and secured the exclusive rights and privileges in and to the copyrights of Norton AntiVirus, Norton Utilities, Norton CleanSweep, Norton Ghost, pcAnywhere, Norton Internet Security, and other software.

105. Plaintiff has produced copies of the software in compliance with all copyright laws, whether by producing copies itself or under license to third parties.

106. Defendants infringed Plaintiff's copyrights by marketing, selling and delivering software largely, if not entirely, copied from Plaintiff's software.

107. Plaintiff informed defendants that Plaintiff owned both the trademark

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1 and the copyright for the software defendants have infringed.

2 108. Plaintiff informed defendants that defendants were infringing
3 Plaintiff's trademarks and copyrights.

4 109. Despite that warning, defendants, and each of them, continue to
5 advertise, market, sell and deliver counterfeit copies of Plaintiff's software,
6 knowing that the discs they deliver are counterfeits and infringing on Plaintiff's
7 copyrights. These actions have caused and continue to cause irreparable injury to
8 Plaintiff by inducing Plaintiff's prospective customers to purchase software from
9 defendants instead of from Plaintiff, and by misleading consumers as to the source
10 of the software.

11 110. At least from and after early 2004, defendants have been producing,
12 marketing, selling and delivering counterfeit copies of Plaintiff's software, in
13 violation and derogation of Plaintiff's copyrights on such software, thereby
14 engaging in unfair trade practices and unfair competition against Plaintiff, causing
15 irreparable damage to Plaintiff.

16 111. Plaintiff is informed and believes and on that basis alleges that as a
17 proximate result of the defendants' marketing, selling and delivering counterfeit
18 copies of Plaintiff's software, defendants have taken unfair advantage of
19 Plaintiff's research, development, advertising, marketing, and consumer
20 recognition of the copyrighted content of the software sold by Plaintiff. Plaintiff
21 is informed and believes and on that basis alleges that defendants have sold
22 numerous counterfeit copies of Plaintiff's software, and have thereby enjoyed
23 substantial profits, which Plaintiff believes are in excess of \$8,000,000.

24 112. Defendants' actions, if not restrained, will continue to cause
25 irreparable harm to Plaintiff, for which Plaintiff has no adequate remedy at law.
26 Defendants misrepresent their own products as those manufactured by Plaintiff.
27 Plaintiff is informed and believes, and on that basis alleges, that consumers who
28 purchase defendants' products, believing they have purchased Plaintiff's software,

1 will not purchase the genuine software from Plaintiff. Plaintiff has permanently
2 lost such consumers as customers, and has permanently lost the profits Plaintiff is
3 entitled to under its copyrights.

4 **FOURTH CLAIM FOR RELIEF**

5 **[Fraud]**

6 **(Against all Defendants)**

7 113. Paragraphs 1 through 112 are incorporated by this reference as
8 though set forth herein in full.

9 114. Plaintiff is informed and believes and on that basis alleges that
10 defendants, in their marketing and advertising and on their internet web sites, have
11 deliberately misrepresented to consumers that the products sold are Symantec
12 and/or Norton products, knowing that they are not.

13 115. Plaintiff is informed and believes and on that basis alleges that
14 defendants intend that consumers will communicate those misrepresentations to
15 Plaintiff in order to obtain customer service and updates or upgrades on terms and
16 conditions that are available only to owners of genuine, authorized Symantec
17 and/or Norton software products.

18 116. Plaintiff is informed and believes and on that basis alleges that
19 defendants make those misrepresentations intending that Plaintiff will act in
20 reasonable reliance thereon, including but not limited to by providing customer
21 service and updates or upgrades to purchasers of defendants' products on terms
22 and conditions that are available only to owners of genuine, authorized Symantec
23 and/or Norton software products.

24 117. Plaintiff has justifiably relied on the misrepresentations of defendants
25 in that, on information and belief, Plaintiff has provided customer service and
26 updates or upgrades to some purchasers of defendants' products as if those
27 consumers had purchased genuine Symantec and/or Norton software products.

28 118. Plaintiff has suffered damages as a proximate result of the

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1 defendants' wrongful acts in an amount as yet undetermined, but in an amount that
2 will be proven at trial.

3 119. Defendants' conduct was and continues to be oppressive, fraudulent
4 and malicious. Accordingly, Plaintiff is entitled to punitive damages in an amount
5 to be proven at trial.

6 **FIFTH CLAIM FOR RELIEF**

7 **[Civil Action for Trafficking in Counterfeit Labels, Documentation**
8 **and/or Packaging in Violation of 18 U.S.C. § 2318]**
9 **(Against All Defendants)**

10 120. Paragraphs 1 through 119 are incorporated by this reference as
11 though set forth herein in full.

12 121. Plaintiff is informed and believes and on that basis alleges that
13 defendants knowingly and without Plaintiff's authorization distribute and/or intend
14 for distribution labels, packaging, and/or documentation, including but not limited
15 to counterfeit serial numbers or product keys, without the genuine, authorized
16 copies of Plaintiff's software that Plaintiff intended such labels, packaging and/or
17 documentation to accompany.

18 122. Plaintiff is informed and believes and on that basis alleges that
19 defendants have in their custody and/or control substantial quantities of software
20 that defendants intend to distribute as Symantec and/or Norton software, in
21 violation of 18 U.S.C. § 2318(a).

22 123. Defendants' actions, if not restrained, will continue to cause
23 irreparable harm to Plaintiff, for which Plaintiff has no adequate remedy at law.

24 124. Plaintiff has suffered damages as a proximate result of the
25 defendants' wrongful acts in an amount as yet undetermined, but in an amount that
26 will be proven at trial.

27 125. Defendants' conduct was and continues to be oppressive, fraudulent
28 and malicious. Accordingly, Plaintiff is entitled to punitive damages in an amount

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1 to be proven at trial.

2 126. Plaintiff is also entitled to recovery of attorneys' fees and costs of suit
3 pursuant to 18 U.S.C. § 2318(f).

4 **SIXTH CLAIM FOR RELIEF**

5 **[Unfair Competition**

6 **Calif. B&P Code § 17200, et seq.]**

7 **(Against all Defendants)**

8 127. Paragraphs 1 through 126 are incorporated by this reference as
9 though set forth herein in full.

10 128. The wrongful acts by defendants, as alleged throughout this
11 complaint, constitute unlawful, unfair or fraudulent business acts and/or practices
12 and unfair, deceptive, untrue or misleading statements and advertising in violation
13 of California Business and Professions Code ("B&P") § 17200.

14 129. As a result of irreparable injuries to Plaintiff caused by defendants'
15 actions for which Plaintiff has no adequate remedy at law, defendants' acts
16 constituting unfair competition should be enjoined, and the Court should make
17 such orders or judgments as may be necessary to prevent the use of any practice
18 which constitutes unfair competition under B&P § 17203.

19 130. Under B&P § 17203, and in addition to, or in lieu of, the damages
20 Plaintiff has sustained to its business and reputation as a result of defendants'
21 actions, Plaintiff seeks as damages restitution and/or disgorgement of the profits
22 that defendants have made by virtue of their acts of unfair competition, in an
23 amount as yet undetermined but as shall be proven at trial.

24 **SEVENTH CLAIM FOR RELIEF**

25 **[Common Law Unfair Competition]**

26 **(Against all Defendants)**

27 131. Paragraphs 1 through 130 are incorporated by this reference as
28 though set forth herein in full.

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1 132. Defendants have pirated the fruits of Plaintiff's labor and are
2 "palming off" those fruits as their own.

3 133. Due to defendants' acts of unfair competition, trade dress
4 infringement, and deception, buyers of counterfeit software sold by defendants
5 under the Norton and/or Symantec label have been deceived as to the source,
6 approval and/or sponsorship of defendants' software, believing they are
7 purchasing software manufactured by Plaintiff when in fact they are not.

8 134. As a result of defendants' acts of unfair competition, Plaintiff has lost
9 sales and profits in an amount as yet undetermined but in an amount that will be
10 proven at trial.

11 135. Defendants' conduct was and continues to be oppressive, fraudulent
12 and malicious. Accordingly, Plaintiff is entitled to punitive damages in an amount
13 to be proven at trial.

14 **EIGHTH CLAIM FOR RELIEF**

15 **[False Advertising**

16 **Calif. B&P Code §§ 17500, 17200]**

17 **(Against all Defendants)**

18 136. Paragraphs 1 through 135 are incorporated by this reference as
19 though set forth herein in full.

20 137. Plaintiff is informed and believes, and on that basis alleges, that
21 defendants included descriptions of Plaintiff's software, pictures of Plaintiff's
22 software and depictions of Plaintiff's trademarks and logos in their advertising
23 materials.

24 138. Plaintiff is informed and believes, and on that basis alleges, that
25 defendants also used language and phrases copied from Plaintiff's advertising
26 literature in their advertising materials, which were disseminated to the public.

27 139. The descriptions, pictures, depictions, language and phrases
28 constitute untrue or misleading statements and advertising in violation of B&P

1 § 17500 in that they suggest the software for sale in the defendants' advertising is
2 software manufactured by Plaintiff, when, in truth, what is being sold is
3 defendants' inferior products.

4 140. The false and misleading statements and advertising also constitute
5 practices that serve as a predicate for a B&P § 17200 violation, and Plaintiff
6 separately alleges a violation of B&P § 17200.

7 141. As a result of defendants' actions, Plaintiff has been damaged in an
8 amount as yet undetermined, but in an amount that will be proven at trial.

9 142. Defendants' conduct was and continues to be oppressive, fraudulent
10 and malicious. Accordingly, Plaintiff is entitled to punitive damages in an amount
11 to be proven at trial.

12 **NINTH CLAIM FOR RELIEF**

13 **[Intentional Interference with Prospective Economic Advantage]**

14 **(Against all Defendants)**

15 143. Paragraphs 1 through 142 are incorporated by this reference as
16 though set forth herein in full.

17 144. This count arises under the unfair competition laws of the State of
18 California.

19 145. Plaintiff has over the years developed a large base of customers and
20 institutions who purchase Plaintiff's products. Plaintiff has also developed a
21 substantial and valuable economic relationship with its products, namely software
22 products including but not limited to Norton AntiVirus, pcAnywhere, Norton
23 Internet Security, and Symantec AntiVirus Small Business Edition.

24 146. Defendants contacted Plaintiff's actual and prospective customers
25 with the intent to deprive Plaintiff of those customers' business. Those customers
26 then purchased products from defendants rather than from Plaintiff. Defendants
27 also interfered with Plaintiff's relationship with its products by marketing and
28 distributing inferior and confusing counterfeit and/or knock-off versions.

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1 147. As a proximate result of defendants' conduct, Plaintiff suffered
2 damages in a sum in excess of \$8,000,000.

3 148. The acts of defendants were willful and malicious. Plaintiff is
4 therefore entitled to punitive damages in an amount not less than \$10,000,000.
5 Unless restrained, defendants will continue to solicit Plaintiff's customers and
6 money damages could not afford adequate relief.

7 **TENTH CLAIM FOR RELIEF**

8 **[Negligent Interference with Prospective Economic Advantage]**

9 **(Against all Defendants)**

10 149. Paragraphs 1 through 148 are incorporated by this reference as
11 though set forth herein in full.

12 150. This count arises under the unfair competition laws of the State of
13 California.

14 151. Plaintiff has over the years developed a large base of customers and
15 institutions who purchase Plaintiff's products. Plaintiff has also developed a
16 substantial and valuable economic relationship with its products, namely software
17 products including but not limited to Norton AntiVirus, pcAnywhere, Norton
18 Internet Security, and Symantec AntiVirus Small Business Edition.

19 152. Defendants have a duty to use due care to refrain from wrongful
20 actions that would interfere with Plaintiff's prospective economically
21 advantageous relationships with Plaintiff's existing customers, potential
22 customers, and products.

23 153. Defendants breached their duties by soliciting Plaintiff's existing
24 and/or potential customers for the purpose of selling to them products bearing
25 Plaintiff's trademarks but which defendant knew or should have known were
26 counterfeit. Those customers then purchased counterfeit products from defendants
27 rather than genuine Symantec products from Plaintiff. Defendants also interfered
28 with Plaintiff's relationship with its products by marketing confusing knock-off

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1 versions when defendants should have known those versions were counterfeit.

2 154. As a proximate result of defendants' conduct, Plaintiff suffered
3 damages in a sum in excess of \$8,000,000.

4 **PRAYER**

5 WHEREFORE, Plaintiff prays for judgment as follows:

6 I. On the First Claim for Relief for Trademark Infringement (Lanham Act, 15
7 U.S.C. § 1051 - 1157):

8 A. That defendants, their officers, agents, and servants, and all persons
9 acting in concert with them, be temporarily restrained, preliminarily
10 enjoined during the pendency of this action, and permanently
11 enjoined thereafter from engaging in further acts of:

- 12 1. using photos of Plaintiff's products or depictions of Plaintiff's
13 products or logos in defendants' advertising;
- 14 2. advertising, selling, licensing, or otherwise marketing or
15 distributing defendants' pirated copies of Plaintiff's software,
16 or any product configuration similar to Plaintiff's products;
- 17 3. using language and phrases contained in Plaintiff's advertising
18 literature in defendants' advertising;
- 19 4. contacting, soliciting, directing advertisements to, or in any
20 other manner using any information about any consumer to
21 whom defendants have sold, distributed, delivered and/or
22 directed advertising for Norton and/or Symantec products or
23 counterfeit Norton and/or Symantec products; and
- 24 5. selling, licensing, or otherwise marketing or distributing
25 unauthorized copies of Plaintiff's software with counterfeit
26 serial numbers or product keys.

27 B. That defendants be required to turn over to Plaintiff (1) all their
28 existing inventory of purported Norton and/or Symantec products,

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- 1 (2) all labels, packages, documentation and/or serial numbers
- 2 (product keys) for purported Norton and/or Symantec products, and
- 3 (3) the names, addresses, telephone numbers, e-mail addresses and
- 4 other information concerning any and all consumers to whom
- 5 defendants have sold, distributed, delivered and/or directed
- 6 advertising for Norton and/or Symantec products or counterfeit
- 7 Norton and/or Symantec products.
- 8 C. That defendants pay to Plaintiff the damages Plaintiff has sustained as
- 9 a consequence of their conduct.
- 10 D. That defendants be required to account for and pay over to Plaintiff
- 11 all the profits which they have derived from their wrongful activities
- 12 and to pay such damages to Plaintiff as to this Court shall appear just
- 13 and proper.
- 14 E. That defendants pay to Plaintiff punitive and/or treble damages for
- 15 their intentional and willful wrongful acts.
- 16 F. That, upon election by Plaintiff, Defendants be required to pay the
- 17 maximum allowable amount of statutory damages for their willful
- 18 infringement of Plaintiff's trademarks.
- 19 G. That Plaintiff recover its costs and reasonable attorneys' fees.
- 20 H. That Plaintiff recover prejudgment interest under 15 USC § 1117(b)
- 21 commencing on the date of service of this Complaint.
- 22 I. That Plaintiff have such other and further relief as to this Court shall
- 23 appear just and proper.
- 24 II. On the Second Claim for Relief for False Designation of Origin — Lanham
- 25 Act § 43(a):
- 26 A. That defendants, their officers, agents, and servants, and all persons
- 27 acting in concert with them, be temporarily restrained, preliminarily
- 28 enjoined during the pendency of this action, and permanently

1 enjoined thereafter from engaging in further acts of:

- 2 1. using photos of Plaintiff's products or depictions of Plaintiff's
- 3 products or logos in defendants' advertising;
- 4 2. advertising, selling, licensing, or otherwise marketing or
- 5 distributing defendants' pirated copies of Plaintiff's software,
- 6 or any product configuration similar to Plaintiff's products;
- 7 3. using language and phrases contained in Plaintiff's advertising
- 8 literature in defendants' advertising;
- 9 4. contacting, soliciting, directing advertisements to, or in any
- 10 other manner using any information about any consumer to
- 11 whom defendants have sold, distributed, delivered and/or
- 12 directed advertising for Norton and/or Symantec products or
- 13 counterfeit Norton and/or Symantec products; and
- 14 5. selling, licensing, or otherwise marketing or distributing
- 15 unauthorized copies of Plaintiff's software with counterfeit
- 16 serial numbers or product keys.

17 B. That defendants be required to turn over to Plaintiff (1) all their
18 existing inventory of purported Norton and/or Symantec products,
19 (2) all labels, packages, documentation and/or serial numbers
20 (product keys) for purported Norton and/or Symantec products, and
21 (3) the names, addresses, telephone numbers, e-mail addresses and
22 other information concerning any and all consumers to whom
23 defendants have sold, distributed, delivered and/or directed
24 advertising for Norton and/or Symantec products or counterfeit
25 Norton and/or Symantec products.

26 C. That defendants pay to Plaintiff the damages Plaintiff has sustained as
27 a consequence of their conduct.

28 D. That defendants be required to account for and pay over to Plaintiff

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1 all the profits which they have derived from their wrongful activities
2 and to pay such damages to Plaintiff as to this Court shall appear just
3 and proper.

4 E. That defendants pay to Plaintiff punitive and/or treble damages for
5 their intentional and willful wrongful acts.

6 F. That Plaintiff recover its costs and reasonable attorneys' fees.

7 G. That Plaintiff recover prejudgment interest under 15 USC § 1117(b)
8 commencing on the date of service of this Complaint.

9 H. That Plaintiff have such other and further relief as to this Court shall
10 appear just and proper.

11 III. On the Third Claim for Relief for Copyright Infringement:

12 A. That defendants, their officers, agents, and servants, and all persons
13 acting in concert with them, be temporarily restrained, preliminarily
14 enjoined during the pendency of this action, and permanently
15 enjoined thereafter from engaging in further acts of:

- 16 1. using photos of Plaintiff's products or depictions of Plaintiff's
17 products or logos in defendants' advertising;
- 18 2. advertising, selling, licensing, or otherwise marketing or
19 distributing defendants' pirated copies of Plaintiff's software,
20 or any product configuration similar to Plaintiff's products;
- 21 3. using language and phrases contained in Plaintiff's advertising
22 literature in defendants' advertising;
- 23 4. contacting, soliciting, directing advertisements to, or in any
24 other manner using any information about any consumer to
25 whom defendants have sold, distributed, delivered and/or
26 directed advertising for Norton and/or Symantec products or
27 counterfeit Norton and/or Symantec products; and
28 5. selling, licensing, or otherwise marketing or distributing

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- 1 unauthorized copies of Plaintiff's software with counterfeit
2 serial numbers or product keys.
- 3 B. That defendants be required to turn over to Plaintiff (1) all their
4 existing inventory of purported Norton and/or Symantec products,
5 (2) all labels, packages, documentation and/or serial numbers
6 (product keys) for purported Norton and/or Symantec products, and
7 (3) the names, addresses, telephone numbers, e-mail addresses and
8 other information concerning any and all consumers to whom
9 defendants have sold, distributed, delivered and/or directed
10 advertising for Norton and/or Symantec products or counterfeit
11 Norton and/or Symantec products.
- 12 C. That defendants pay to Plaintiff the damages Plaintiff has sustained as
13 a consequence of their conduct.
- 14 D. That defendants be required to account for and pay over to Plaintiff
15 all the profits which they have derived from their wrongful activities
16 and to pay such damages to Plaintiff as to this Court shall appear just
17 and proper.
- 18 E. That, upon election by Plaintiff, defendants be required to pay the
19 maximum allowable amount of statutory damages for their willful
20 infringement of Plaintiff's copyrights.
- 21 F. That Plaintiff recover its costs and reasonable attorneys' fees.
- 22 G. That Plaintiff have such other and further relief as to this Court shall
23 appear just and proper.
- 24 IV. On the Fourth Claim for Relief for Fraud:
- 25 A. That defendants, their officers, agents, and servants, and all persons
26 acting in concert with them, be temporarily restrained, preliminarily
27 enjoined during the pendency of this action, and permanently
28 enjoined thereafter from engaging in further acts of:

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1. using photos of Plaintiff's products or depictions of Plaintiff's products or logos in defendants' advertising;
 2. advertising, selling, licensing, or otherwise marketing or distributing defendants' pirated copies of Plaintiff's software, or any product configuration similar to Plaintiff's products;
 3. using language and phrases contained in Plaintiff's advertising literature in defendants' advertising;
 4. contacting, soliciting, directing advertisements to, or in any other manner using any information about any consumer to whom defendants have sold, distributed, delivered and/or directed advertising for Norton and/or Symantec products or counterfeit Norton and/or Symantec products; and
 5. selling, licensing, or otherwise marketing or distributing unauthorized copies of Plaintiff's software with counterfeit serial numbers or product keys.
- B. That defendants be required to turn over to Plaintiff (1) all their existing inventory of purported Norton and/or Symantec products, (2) all labels, packages, documentation and/or serial numbers (product keys) for purported Norton and/or Symantec products, and (3) the names, addresses, telephone numbers, e-mail addresses and other information concerning any and all consumers to whom defendants have sold, distributed, delivered and/or directed advertising for Norton and/or Symantec products or counterfeit Norton and/or Symantec products.
- C. That defendants pay to Plaintiff the damages Plaintiff has sustained as a consequence of their conduct.
- D. That defendants be required to account for and pay over to Plaintiff all the profits which they have derived from their wrongful activities

1 and to pay such damages to Plaintiff as to this Court shall appear just
2 and proper.

3 E. That defendants pay to Plaintiff punitive damages for their intentional
4 and willful wrongful acts.

5 F. That Plaintiff recover its costs and reasonable attorneys' fees.

6 G. That Plaintiff have such other and further relief as to this Court shall
7 appear just and proper.

8 V. On the Fifth Claim for Relief for Trafficking in Counterfeit Labels,
9 Documentation and/or Packaging in Violation of 18 U.S.C. § 2318:

10 A. That defendants, their officers, agents, and servants, and all persons
11 acting in concert with them, be temporarily restrained, preliminarily
12 enjoined during the pendency of this action, and permanently
13 enjoined thereafter from engaging in further acts of:

- 14 1. using photos of Plaintiff's products or depictions of Plaintiff's
15 products or logos in defendants' advertising;
- 16 2. advertising, selling, licensing, or otherwise marketing or
17 distributing defendants' pirated copies of Plaintiff's software,
18 or any product configuration similar to Plaintiff's products;
- 19 3. using language and phrases contained in Plaintiff's advertising
20 literature in defendants' advertising;
- 21 4. contacting, soliciting, directing advertisements to, or in any
22 other manner using any information about any consumer to
23 whom defendants have sold, distributed, delivered and/or
24 directed advertising for Norton and/or Symantec products or
25 counterfeit Norton and/or Symantec products; and
- 26 5. selling, licensing, or otherwise marketing or distributing
27 unauthorized copies of Plaintiff's software with counterfeit
28 serial numbers or product keys.

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- 1 B. That defendants be required to turn over to Plaintiff (1) all their
2 existing inventory of purported Norton and/or Symantec products,
3 (2) all labels, packages, documentation and/or serial numbers
4 (product keys) for purported Norton and/or Symantec products, and
5 (3) the names, addresses, telephone numbers, e-mail addresses and
6 other information concerning any and all consumers to whom
7 defendants have sold, distributed, delivered and/or directed
8 advertising for Norton and/or Symantec products or counterfeit
9 Norton and/or Symantec products.
- 10 C. That Defendants pay to Plaintiff the damages Plaintiff has sustained
11 as a consequence of their conduct.
- 12 D. That defendants be required to turn over to the Court all copies of
13 software bearing or containing the Norton or Symantec name,
14 label(s), trademark(s), logo(s), documentation, and/or authorization
15 codes purporting to indicate genuine and/or authorized Norton and/or
16 Symantec products.
- 17 E. That defendants be required to account for and pay over to Plaintiff
18 all the profits which they have derived from their wrongful activities.
- 19 F. That Defendants be required to pay over to Plaintiff the Plaintiff's
20 actual damages as provided in 18 U.S.C. § 2318(f)(3).
- 21 G. That defendants pay to Plaintiff punitive damages for their intentional
22 and willful wrongful acts.
- 23 H. That Plaintiff recover its costs and reasonable attorneys' fees.
- 24 I. That Plaintiff have such other and further relief as to this Court shall
25 appear just and proper.

26 VI. On the Sixth Claim for Relief for Unfair Competition (Calif. B&P Code
27 § 17200, *et seq.*):

- 28 A. That defendants, their officers, agents, and servants, and all persons

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1 acting in concert with them, be temporarily restrained, preliminarily
2 enjoined during the pendency of this action, and permanently
3 enjoined thereafter from engaging in further acts of:

- 4 1. using photos of Plaintiff's products or depictions of Plaintiff's
5 products or logos in defendants' advertising;
- 6 2. advertising, selling, licensing, or otherwise marketing or
7 distributing defendants' pirated copies of Plaintiff's software,
8 or any product configuration similar to Plaintiff's products;
- 9 3. using language and phrases contained in Plaintiff's advertising
10 literature in defendants' advertising;
- 11 4. contacting, soliciting, directing advertisements to, or in any
12 other manner using any information about any consumer to
13 whom defendants have sold, distributed, delivered and/or
14 directed advertising for Norton and/or Symantec products or
15 counterfeit Norton and/or Symantec products; and
- 16 5. selling, licensing, or otherwise marketing or distributing
17 unauthorized copies of Plaintiff's software with counterfeit
18 serial numbers or product keys.

19 B. That defendants be required to turn over to Plaintiff (1) all their
20 existing inventory of purported Norton and/or Symantec products,
21 (2) all labels, packages, documentation and/or serial numbers
22 (product keys) for purported Norton and/or Symantec products, and
23 (3) the names, addresses, telephone numbers, e-mail addresses and
24 other information concerning any and all consumers to whom
25 defendants have sold, distributed, delivered and/or directed
26 advertising for Norton and/or Symantec products or counterfeit
27 Norton and/or Symantec products.

28 C. That defendants be required to account for and pay over to Plaintiff

1 all the profits which they have derived from their wrongful activities
2 and to pay such damages to Plaintiff as to this Court shall appear just
3 and proper.

4 D. That Plaintiff recover its costs and reasonable attorneys' fees.

5 E. That Plaintiff have such other and further relief as to this Court shall
6 appear just and proper.

7 VII. On the Seventh Claim for Relief for Common Law Unfair Competition:

8 A. That defendants, their officers, agents, and servants, and all persons
9 acting in concert with them, be temporarily restrained, preliminarily
10 enjoined during the pendency of this action, and permanently
11 enjoined thereafter from engaging in further acts of:

- 12 1. using photos of Plaintiff's products or depictions of Plaintiff's
13 products or logos in defendants' advertising;
- 14 2. advertising, selling, licensing, or otherwise marketing or
15 distributing defendants' pirated copies of Plaintiff's software,
16 or any product configuration similar to Plaintiff's products;
- 17 3. using language and phrases contained in Plaintiff's advertising
18 literature in defendants' advertising;
- 19 4. contacting, soliciting, directing advertisements to, or in any
20 other manner using any information about any consumer to
21 whom defendants have sold, distributed, delivered and/or
22 directed advertising for Norton and/or Symantec products or
23 counterfeit Norton and/or Symantec products; and
- 24 5. selling, licensing, or otherwise marketing or distributing
25 unauthorized copies of Plaintiff's software with counterfeit
26 serial numbers or product keys.

27 B. That defendants be required to turn over to Plaintiff (1) all their
28 existing inventory of purported Norton and/or Symantec products,

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LOS ANGELES, CALIFORNIA 90017
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LOS ANGELES, CALIFORNIA 90017
(213) 630-5000

(2) all labels, packages, documentation and/or serial numbers (product keys) for purported Norton and/or Symantec products, and (3) the names, addresses, telephone numbers, e-mail addresses and other information concerning any and all consumers to whom defendants have sold, distributed, delivered and/or directed advertising for Norton and/or Symantec products or counterfeit Norton and/or Symantec products.

C. That defendants pay to Plaintiff the damages Plaintiff has sustained as a consequence of their conduct.

D. That defendants be required to account for and pay over to Plaintiff all the profits which they have derived from their wrongful activities and to pay such damages to Plaintiff as to this Court shall appear just and proper.

E. That defendants pay to Plaintiff punitive damages for their intentional and willful wrongful acts.

F. That Plaintiff recover its costs and reasonable attorneys' fees.

G. That Plaintiff have such other and further relief as to this Court shall appear just and proper.

VIII. On the Eighth Claim for Relief for False Advertising (Calif. B&P Code §§ 17500, 17200):

A. That defendants, their officers, agents, and servants, and all persons acting in concert with them, be temporarily restrained, preliminarily enjoined during the pendency of this action, and permanently enjoined thereafter from engaging in further acts of:

1. using photos of Plaintiff's products or depictions of Plaintiff's products or logos in defendants' advertising;
2. advertising, selling, licensing, or otherwise marketing or distributing defendants' pirated copies of Plaintiff's software,

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(213) 630-5000

- 1 or any product configuration similar to Plaintiff's products;
- 2 3. using language and phrases contained in Plaintiff's advertising
- 3 literature in defendants' advertising;
- 4 4. contacting, soliciting, directing advertisements to, or in any
- 5 other manner using any information about any consumer to
- 6 whom defendants have sold, distributed, delivered and/or
- 7 directed advertising for Norton and/or Symantec products or
- 8 counterfeit Norton and/or Symantec products; and
- 9 5. selling, licensing, or otherwise marketing or distributing
- 10 unauthorized copies of Plaintiff's software with counterfeit
- 11 serial numbers or product keys.
- 12 B. That defendants be required to turn over to Plaintiff (1) all their
- 13 existing inventory of purported Norton and/or Symantec products,
- 14 (2) all labels, packages, documentation and/or serial numbers
- 15 (product keys) for purported Norton and/or Symantec products, and
- 16 (3) the names, addresses, telephone numbers, e-mail addresses and
- 17 other information concerning any and all consumers to whom
- 18 defendants have sold, distributed, delivered and/or directed
- 19 advertising for Norton and/or Symantec products or counterfeit
- 20 Norton and/or Symantec products.
- 21 C. That defendants be required to account for and pay over to Plaintiff
- 22 all the profits which they have derived from their wrongful activities
- 23 and to pay such damages to Plaintiff as to this Court shall appear just
- 24 and proper.
- 25 D. That Plaintiff recover its costs and reasonable attorneys' fees.
- 26 E. That Plaintiff have such other and further relief as to this Court shall
- 27 appear just and proper.
- 28 IX. On the Ninth Claim for Relief for Intentional Interference with Prospective

1 Economic Advantage:

- 2 A. That defendants pay to Plaintiff the damages Plaintiff has sustained as
3 a consequence of their conduct.
4 B. That defendants be required to account for and pay over to Plaintiff
5 all the profits which they have derived from their wrongful activities
6 and to pay such damages to Plaintiff as to this Court shall appear just
7 and proper.
8 C. That defendants pay to Plaintiff punitive damages for their intentional
9 and willful wrongful acts.
10 D. That Plaintiff recover its costs and reasonable attorneys' fees.
11 E. That Plaintiff have such other and further relief as to this Court shall
12 appear just and proper.

13 X. On the Tenth Claim for Relief for Negligent Interference with Prospective
14 Economic Advantage:

- 15 A. That defendants pay to Plaintiff the damages Plaintiff has sustained as
16 a consequence of their conduct.
17 B. That defendants be required to account for and pay over to Plaintiff
18 all the profits which they have derived from their wrongful activities
19 and to pay such damages to Plaintiff as to this Court shall appear just
20 and proper.
21 C. That Plaintiff recover its costs and reasonable attorneys' fees.
22 D. That Plaintiff have such other and further relief as to this Court shall
23 appear just and proper.
24
25
26
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28

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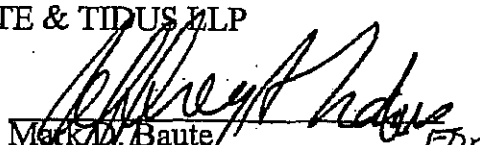
DEMAND FOR JURY TRIAL

The Plaintiff hereby demands a trial by jury in this action.

Dated: March 27, 2007

BAUTE & TIDUS LLP

By:


Mark D. Baute
Attorneys for Plaintiff
SYMANTEC CORPORATION

BAUTE & TIDUS LLP
801 SOUTH FIGUEROA STREET, SUITE 1100
LOS ANGELES, CALIFORNIA 90017
(213) 630-5000

VIA FAX

AO 121 (5/90)

TO: Register of Copyrights Copyright Office Library of Congress Washington, D.C. 20559	REPORT ON THE FILING OR DETERMINATION OF AN ACTION OR APPEAL REGARDING A COPYRIGHT
--	--

In compliance with the provisions of 17 U.S.C. 508, you are hereby advised that a court action or appeal has been filed on the following copyright(s):

<input checked="" type="checkbox"/> ACTION <input type="checkbox"/> APPEAL		COURT NAME AND LOCATION U.S. DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA
DOCKET NO.	DATE FILED	940 Front Street, #4290 San Diego, CA 92101
PLAINTIFF SYMANTEC CORPORATION		DEFENDANT EDIRECTSOFTWARE, a Canadian partnership; [continued on Attachment A]
COPYRIGHT REGISTRATION NO.	TITLE OF WORK	AUTHOR OF WORK
1	SEE ATTACHMENT B	
2		
3		
4		
5		

In the above-entitled case, the following copyright(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
COPYRIGHT REGISTRATION NO.	TITLE OF WORK	AUTHOR OF WORK	
1			
2			
3			

In the above-entitled case, a final decision was rendered on the date entered below. A copy of the order or judgment together with the written opinion, if any, of the court is attached.

COPY ATTACHED <input type="checkbox"/> Order <input type="checkbox"/> Judgment	WRITTEN OPINION ATTACHED <input type="checkbox"/> Yes <input type="checkbox"/> No	DATE RENDERED
CLERK	(BY) DEPUTY CLERK	DATE

Copy 1 - Upon Initiation of action, mail this copy to Register of Copyrights

U.S. G.P.O. 1982-374-279
AO-121

SYMANTEC CORPORATION v. EDIRECTSOFTWARE., et al.

U.S.D.C. Case No. [to be assigned]

Register of Copyrights
Copyright Office
Library of Congress
Washington, D.C. 20559

ATTACHMENT A TO
REPORT ON THE FILING OR DETERMINATION OF AN ACTION OR APPEAL
REGARDING A COPYRIGHT

Defendants (continued) . . .

. . . JESSE WILLMS, an individual; LINDA WILLMS, an individual; MICHAEL CALLAWAY, an individual; 1016363 ALBERTA LTD., a Canadian Corporation; 1021018 ALBERTA LTD., a Canadian Corporation; and DOES 1-10, inclusive.

93651.1

Attachment
SYMANTEC v. EDIRECTSOFTWARE

SYMANTEC CORPORATION v. EDIRECTSOFTWARE, et al.

U.S.D.C. Case No. [to be assigned]

Register of Copyrights
 Copyright Office
 Library of Congress
 Washington, D.C. 20559

ATTACHMENT B TO
REPORT ON THE FILING OR DETERMINATION OF AN ACTION OR APPEAL
REGARDING A COPYRIGHT

COPYRIGHT REGISTRATION NO.	TITLE OF WORK	AUTHOR OF WORK
TX-4-024-771 TX-4-170-740 TX-4-739-697 TX-4-832-174 TX-4-908-397 TX 5-704-654 TX 5-704-655	Norton AntiVirus, Various Versions	SYMANTEC CORPORATION
TX-4-715-123 TX 4-715-124 TX 4-715-125 TX 4-715-127 TX 6-358-626 TX 6-361-698 FX 6-361-699	Norton Ghost, Various Versions	SYMANTEC CORPORATION
TX-1-987-393 TX-2-288-795 TX-3-772-059 TX-3-772-061 TX-4-024-772 TX-4-024-773 TX-4-024-802 TX-4-396-091 TX-4-421-276	Norton Utilities, Various Versions	SYMANTEC CORPORATION
TX-3-381-482 TX-4-261-954 TX-6-358-627	pcAnywhere	SYMANTEC CORPORATION

93651.1

Attachment
SYMANTEC v. EDIRECTSOFTWARE

VIA FAX

JS 44
(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

SYMANTEC CORPORATION

DEFENDANTS

EDIRECTSOFTWARE, a Canadian partnership;
[continued on Attachment 2]

FILED

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Santa Clara
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

BAUTE & TIDUS LLP
801 South Figueroa Street
Suite 1100
Los Angeles, CA 90017
(213) 630-5000

ATTORNEYS (IF KNOWN)

'07 CY 0563

BEN WMc

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PT | DEF | | PT | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.) Trademark infringement 15 U.S.C. Secs. 1051-1157;
copyright infringement, 17 U.S.C. Sec. 501; trafficking in counterfeit labels, etc., 18 U.S.C. Sec. 2318; fraud; unfair competition.

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 161 Medicare Act <input type="checkbox"/> 162 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 163 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 169 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 620 Copyrights <input type="checkbox"/> 630 Patent <input checked="" type="checkbox"/> 640 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395B) <input type="checkbox"/> 862 Black Lung (923) (405(a)) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7608	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 420 Banks and Banking <input type="checkbox"/> 450 Commercial/CC Rules/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fed. Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motion to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions		

VI. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removal from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE

March

27, 2007

SIGNATURE OF ATTORNEY OF RECORD

Jeffrey K. Nader

::ODMA\PCDOCS\WORDPERFECT\22816\ January 24, 2000 (3:10pm)

130506 \$350 sel 3/27/07

UNITED STATES
DISTRICT COURT
Northern District of California
San Jose Division

IN RE: 170650000 - 000
CLASSIFIED BY: 1204007

Case	Date	By	Amount
170650000 - 000 - 000			\$0.00
170650000 - 000 - 000			\$0.00
170650000 - 000 - 000			\$0.00
170650000 - 000 - 000			\$0.00

CLASSIFIED BY: 1204007

UNITED STATES
DISTRICT COURT
Northern District of California
San Jose Division

1 BAUTE & TIDUS LLP
2 Mark D. Baute (State Bar No. 127329)
3 mbaute@bautelaw.com
4 Jeffrey A. Tidus (State Bar No. 089585)
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6 777 South Figueroa Street, Suite 4900
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10 Attorneys for Plaintiff
11 SYMANTEC CORPORATION

12 BRYAN CAVE LLP
13 Paul N. Tauger (State Bar No. 160552)
14 paul.tauger@bryancave.com
15 Margarita Salazar (State Bar No. 224649)
16 120 Broadway, Suite 300
17 Santa Monica, CA 90401-2386
18 Telephone: (310) 576-2100
19 Facsimile: (310) 576-2200

20 Attorneys for Defendants
21 EDIRECTSOFTWARE, JESSE WILLMS,
22 LINDA WILLMS, 1016363 ALBERTA LTD.,
23 and 1021018 ALBERTA LTD.

24 UNITED STATES DISTRICT COURT
25 SOUTHERN DISTRICT OF CALIFORNIA

26 SYMANTEC CORPORATION,

27 Plaintiff,

28 vs.

EDIRECTSOFTWARE, a Canadian
partnership; JESSE WILLMS, an
individual; LINDA WILLMS, an
individual; MICHAEL CALLAWAY,
an individual; 1016363 ALBERTA
LTD., a Canadian Corporation; 1021018
ALBERTA LTD., a Canadian
Corporation; and DOES 1-10, inclusive,

Defendants.

Case No. 07 CV 0563 DMS (NLS)
[Complaint Filed: March 27, 2007]

**STIPULATED PERMANENT
INJUNCTION**

Hon. Dana M. Sabraw

1 **IT IS HEREBY STIPULATED** by and between the plaintiff, **SYMANTEC**
2 **CORPORATION** (hereinafter, "Plaintiff"), and defendants
3 **EDIRECTSOFTWARE**, a Canadian partnership, **JESSE WILLMS**, an individual,
4 **LINDA WILLMS**, an individual, **1016363 ALBERTA LTD.**, a Canadian
5 Corporation, and **1021018 ALBERTA LTD.**, a Canadian Corporation (hereinafter,
6 collectively "Defendants") that the following shall be ordered as a Permanent
7 Injunction in this matter and is so entered:

8 1. The Defendants, their directors, principals, officers, agents, servants,
9 employees, in-house counsel, representatives, successors and assigns, and all those
10 acting in concert or participation with them shall be, and hereby are **ENJOINED**
11 from:

12 (a) Imitating, copying, manufacturing, replicating, or making any
13 other unauthorized use, distribution or sale of products protected
14 by Plaintiff's registered trademarks and/or trade name, including
15 the following trademarks and/or service marks:

- 16 (1) "Symantec" name and distinctive yellow and black logo,
17 registration numbers 1654777, 1683688, and 2205386.
18 (2) "Veritas," registration number 1687640.
19 (3) "Norton SystemWorks", registration number 2488092.
20 (4) "Norton AntiVirus", registration number 1758084.
21 (5) "Ghost", registration number 1107115.
22 (6) "LiveUpdate", registration number 2243057.
23 (7) "Norton Utilities", registration number 1508960.
24 (8) "pcAnywhere", registration number 1781148.
25 (9) "CleanSweep", registration number 1936913.
26 (10) "WinFax", registration number 1757561.
27 (11) "GoBack."

1 (12) Norton "PartitionMagic," registration number 1981682.

2 (13) "Backup Exec," registration number 1988765.

3 (b) Copying, manufacturing, replicating or making any other
4 unauthorized use, distribution or sale of products protected by
5 Plaintiff's copyrights, including but not limited to the various
6 versions of each product listed in paragraph 1.(a) above.

7 (c) Duplicating, manufacturing, replicating, assembling, producing,
8 distributing, offering for distribution, selling, offering for sale,
9 circulating, advertising, importing, exporting, marketing,
10 promoting, printing, displaying, transferring, and/or moving any
11 product or thing bearing any simulation, reproduction,
12 counterfeit, copy, or colorable imitation of Plaintiff's registered
13 trademarks, trade name, service marks, or copyrights, including,
14 but not limited to, the marks and copyrights represented by the
15 trademarks and/or service marks listed in subparagraph (a) above;

16 (d) Using any simulation, reproduction, counterfeit, unauthorized,
17 copy, or colorable imitation of Plaintiff's registered trademarks,
18 trade name, service marks, or copyrights including, but not
19 limited to, marks and copyrights represented by the trademarks
20 and/or service marks listed in subparagraph (a) above, in
21 connection with the manufacture, duplication, replication,
22 assembly, production, distribution, offer for distribution, sale,
23 offer for sale, circulation, advertisement, import, export,
24 marketing, promotion, printing, display, transfer, and/or
25 movement of any product or thing not authorized or licensed by
26 Plaintiff; engaging in any other activity constituting an
27 infringement of Plaintiff's trademarks or copyrights, or of
28

1 Plaintiff's rights in, or right to use or exploit said trademarks or
2 copyrights, or constituting any dilution of Plaintiff's name,
3 reputation, or goodwill;

4 (e) Using any false designation of origin or false description which
5 can or is likely to lead the trade or public, or individual members
6 thereof, erroneously to believe that any product or thing has been
7 manufactured, duplicated, replicated, assembled, produced,
8 distributed, offered for distribution, circulated, advertised,
9 imported, exported, marketed, promoted, printed, displayed,
10 transferred, moved, licensed, sponsored, approved, or authorized
11 by or for Plaintiff;

12 (f) Using reproductions, counterfeits, copies, or colorable imitations
13 of Plaintiff's copyright and/or trademark protected software;

14 (g) Duplication, assembly, production, manufacture, replication,
15 distribution, offer for distribution, sale, offer for sale, circulation,
16 advertisement, import, export, marketing, promotion, printing,
17 display, transfer, and/or movement, of counterfeit merchandise
18 not authorized by Plaintiff;

19 (h) Using the name, logo, or other variations thereof of Plaintiff's
20 copyright and/or trademark protected software in any of the
21 Defendants' trade or corporate names;

22 (i) Engaging in any other activity constituting an infringement of any
23 of Plaintiff's trademarks, service marks, or copyrights, or of
24 Plaintiff's rights in, or right to use or to exploit said trademarks,
25 service marks, or copyrights;

26 (j) Using unsolicited e-mails to advertise, market, distribute,
27 promote, or otherwise publicize the sale of any Symantec product,
28

1 or any product using any simulation, reproduction, counterfeit,
2 copy, or colorable imitation of Symantec's registered trademarks,
3 trade name, service marks, or copyrights including, but not
4 limited to, marks and copyrights represented by the trademarks
5 and/or service marks listed or referred to in subparagraphs (a) and
6 (b) above; and

7 (k) Assisting, aiding, or abetting any other person or business entity
8 in engaging in or performing any of the activities referred to in
9 subparagraphs (a) through (j) above.

10 2. This permanent injunction shall be applicable to and prohibit acts
11 performed within or directed towards any person or entity within the jurisdiction of
12 this Court (the United States, its territories and possessions) and the Court shall retain
13 jurisdiction over this action to the extent necessary to enforce and interpret this
14 injunction.

15 3. The Defendants shall immediately deliver to Symantec all remaining
16 inventory of software, compact disks, floppy disks, DVDs, stampers, masters,
17 advertisements or artwork and/or other media bearing the Symantec, Veritas, Norton,
18 Norton Utilities, CleanSweep, Go Back, AntiVirus, PartitionMagic, pcAnywhere,
19 Ghost, WinFax, LiveUpdate, Backup Exec, and/or SystemWorks names, marks or
20 logos, including but not limited to all compact discs, software products, and all
21 replication materials, equipment and parts bearing any Symantec trademark or
22 copyrighted works. The Defendants further agree that they, their directors, principals,
23 officers, agents, servants, employees, in-house counsel, representatives, successors
24 and assigns, and all those acting in concert or participation with them will not
25 purchase, manufacture, replicate, duplicate, sell, ship or resell any Norton, Symantec
26 or Veritas product, except that Defendants may purchase genuine Symantec or Norton
27 software for their own use.

1 4. The Defendants shall make their best efforts to avoid working with any
2 person or business entity that engages in unauthorized sales, manufacturing,
3 duplication, replication, or distribution of Veritas, Norton and/or Symantec products.
4 The Defendants further agree to not knowingly fulfill any order for any Veritas,
5 Norton and/or Symantec product which has not been authorized by Symantec. The
6 Defendants further agree that if any such order is placed, Defendants shall
7 immediately inform Symantec and its counsel in writing of all particulars of such
8 order, including the name, address and telephone number of the person or business
9 entity placing the order, the product or products ordered, the quantities of each
10 product ordered, and any other information contained in such order, and Defendants
11 shall not fulfill such order without prior written authorization from Symantec, which
12 Symantec may decline to give in its sole discretion.

13
14 **IT IS SO ORDERED:**


15
16 Dated: _____

UNITED STATES DISTRICT JUDGE

17
18
19 **IT IS SO STIPULATED:**

20
21 Dated: January 16, 2008

PLAINTIFF
SYMANTEC CORPORATION

22
23 By: 
24 Name: Joseph P. Fitzgerald
25 Is Vice President, Legal/Deputy General Counsel

26 Dated: January __, 2008

DEFENDANT JESSE WILLMS

1 4. The Defendants shall make their best efforts to avoid working with any
2 person or business entity that engages in unauthorized sales, manufacturing,
3 duplication, replication, or distribution of Veritas, Norton and/or Symantec products.
4 The Defendants further agree to not knowingly fulfill any order for any Veritas,
5 Norton and/or Symantec product which has not been authorized by Symantec. The
6 Defendants further agree that if any such order is placed, Defendants shall
7 immediately inform Symantec and its counsel in writing of all particulars of such
8 order, including the name, address and telephone number of the person or business
9 entity placing the order, the product or products ordered, the quantities of each
10 product ordered, and any other information contained in such order, and Defendants
11 shall not fulfill such order without prior written authorization from Symantec, which
12 Symantec may decline to give in its sole discretion.

13
14 **IT IS SO ORDERED:**

15
16 Dated: 1-29-08


UNITED STATES DISTRICT JUDGE

17
18
19 **IT IS SO STIPULATED:**

20
21 Dated: January __, 2008

PLAINTIFF
SYMANTEC CORPORATION

22
23 By: _____
24 Name: _____
25 Its: _____

26 Dated: January 15, 2008

DEFENDANT JESSE WILLMS

27
28 


1 Dated: January 15, 2008

DEFENDANT LINDA WILLMS

2
3 

4 Dated: January 15, 2008

DEFENDANT EDIRECTSOFTWARE, a
Canadian Partnership

5
6 By: 
7 Name: Jesse Willms
8 Its: CEO

9
10 By: 
11 Name: Jesse Willms
12 Its: CEO


13 Dated: January 15, 2008

DEFENDANT 1016363 ALBERTA LTD., a
Canadian Corporation

14
15 By: 
16 Name: Jesse Willms
17 Its: CEO

18 Dated: January 15, 2008

DEFENDANT 1021018 ALBERTA LTD., a
Canadian Corporation

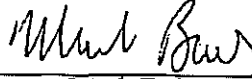
19
20 By: 
21 Name: Jesse Willms
22 Its: CEO

APPROVED AS TO FORM AND CONTENT

Approved for Plaintiff:

BAUTE & TIDUS LLP

By:

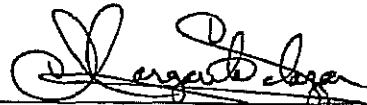


Mark D. Baute

Approved for Defendants:

BRYAN CAVE LLP

By:



Paul N. Tanager

Margarita Sakar

Jan. 15, 2008

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the aforesaid County, State of California; I am over the age
4 of 18 and not a party to the within action; my business address is

5 ✓ — **BAUTE & TIDUS LLP**
6 777 South Figueroa Street, Suite 4900
7 Los Angeles, CA 90017
8 Tel: (213) 630-5000

9 — **ACE MESSENGER AND ATTORNEY SERVICE, INC.**
10 811 Wilshire Boulevard, Suite 900
11 Los Angeles, CA 90017 Tel: (213) 623-3979

12 I served the following listed documents on the interested parties in this action
13 as follows:

14 **SYMANTEC v. EDIRECTSOFTWARE**
15 **USDC, Southern District, Case No. 07 CV 0563 DMS (NLS)**
16 **[1740.31]**

17 **STIPULATED PERMANENT INJUNCTION**

18 — By Personal Service I caused such envelope to be delivered by hand to the
19 interested party as listed below.

20 — By Facsimile to the names and fax numbers listed below.

21 — By Federal Express ~ Next Business Day Delivery: by placing a true copy
22 thereof in a sealed envelope(s) and addressed to the parties listed below.

23 ✓ — By Mail: by placing a true copy thereof in a sealed envelope and addressed to
24 the parties listed below. I placed such envelope(s) for deposit in the U.S. Mail
25 for service by the United States Postal Service, with postage thereon fully
26 prepaid.

27 I am "readily familiar" with this firm's practice of collection and processing
28 correspondence for mailing. Under that practice, it would be deposited with
the U.S. Postal Service on that same day with postage thereon fully prepaid at
Los Angeles, California, in the ordinary course of business. I am aware that,
on motion of the party served, service is presumed invalid if postal cancellation
date or postage meter date is more than one day after the date of deposit for

mailing in affidavit.

By E-Mail: I caused the above-referenced document(s) to be e-mailed to the parties listed below, as noted.

Paul N. Tauger, Esq.
BRYAN CAVE LLP
120 Broadway, Suite 300
Santa Monica, CA 90401-2386
Telephone: 310-576-2100
Facsimile: 310-576-2200
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Attorneys for Defendants
EDIRECTSOFTWARE
Mr. Jesse Willms
Ms. Linda Willms
1016363 ALBERTA LTD. and
1021018 ALBERTA LTD.

[Rev. May 1, 2007]

☐ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☒ (FEDERAL) I hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made, and I certify under penalty of perjury that the foregoing is true and correct.

☐ (FEDERAL - ATTORNEY) I hereby certify that I am a member of the Bar of the United States District Court, *Central District* of California, and I certify under penalty of perjury that the foregoing is true and correct.

Executed on 1/18/08 at Los Angeles, California.

Kirsten DeVere
print name


signature